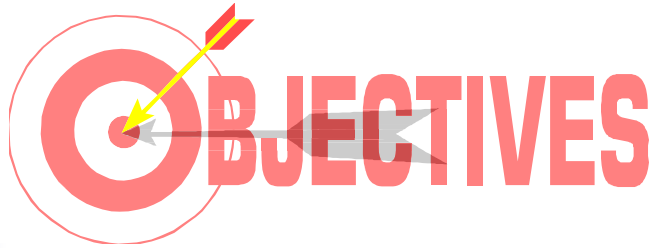




CHAPTER 9

THE PURCHASE AGREEMENT



- Describe the process of writing an offer to purchase.
- Discuss various clauses in the contract
- Know the importance of the Buyer's Inspection Advisory
- Identify when to advise client to seek tax advice and legal advice.
- Explain the various addendum and exhibits attached.



A. Getting Ready to Write the Offer

- Prepare buyer for informed decisions
- Put aside subjective feelings
- Answer objections
- Make efforts that produce favorable responses from the buyer
- Look for buying signals
- Complete all provisions on the form(s)
- Commit each party legally
- Reduce conflict(s)
- Create a professional image



Agency Responsibility

- Agency choices
 - buyer's agent
 - dual agent
- Meet your AGENCY Responsibility
 - **D**isclosure
 - **E**lection
 - **C**onfirmation



Obtain property information

- prior to writing the offer
- Existing termite report(s)
- Existing report(s) and repair estimates
- Copy of seller's TDS
- Completed mandatory disclosures
- market conditions
- If multiple offers, ask how many



The client in the transaction

- Help your client figure out reasonable price and terms
- Give a buyer a sample contract
- Establish a relationship
- Discuss the details of the documents
- Make the buyer feel more comfortable
- Make sure the decision-makers are present
- Meet later that day to review the contract



Purpose of writing the offer

- To write a winning offer that protects the rights of the buyer(s)
- To act in a fiduciary capacity
- To represent the buyer as a single or dual agent
- To legally bind the parties
- To look out for the best interest of the client.
- To have buyer sign Agency before the offer.

(Blank space is missing in student study guide, p. 94. "...remember that you are _____ bound to be looking out ...")

(Blank space is missing in student study guide, p.94. "...sign the DRAR _____ writing up the offer...")



B. Selecting the Contract

- various contracts are used
- Fill out a contract in a competent manner
- explain the content to the buyer
- CAR – RPA 11

C. The Residential Purchase Agreement

- Fill in ALL the blanks, or mark off the blanks with N/A or a line
- Contract completion varies, based on:
 - buyer's market
 - seller's market
- Purpose:
 1. residential purchase agreement
 2. receipt for deposit
 3. joint escrow instructions



DEPOSIT RECEIPT

- Enforceable agreement while parties prepare to close transaction
- Establishes terms and conditions of the sale
- Agent may be liable for negligent preparation
- Write this 100 times:
licensees are not permitted to give legal or tax advice



(Blank missing for legal or tax advice from Student Study Guide, p. 95. "...buyers and sellers _____")

- See an attorney or CPA



ADVICE

As a Salesperson, I am licensed to sell real estate property, and NOT TO GIVE
LEGAL ADVICE
TAX ADVICE
non-real estate advice

Acceptance of the fill-in-the-blank contract is based upon the California Bar Association agreement that real estate licensees are not seen as practicing law!



ESSENTIAL ELEMENTS OF A DEPOSIT RECEIPT

- In writing to comply with Statute of Frauds
- Becomes a binding contract between buyer and seller
- Restates obligation to pay broker a commission
- Parties capable of contracting
- Mutual consent
- Lawful object
- Sufficient consideration

DEPOSIT RECEIPT

First Paragraph

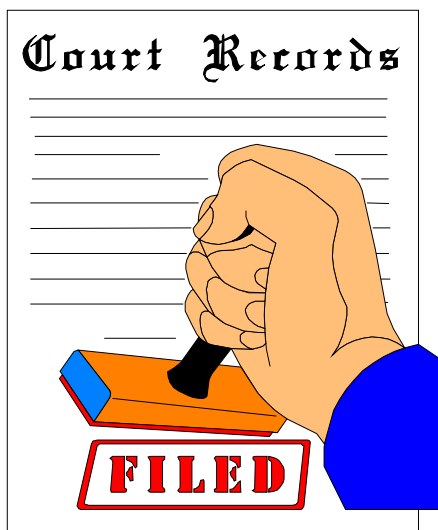


- Full legal names of all parties
- Description of the property (address)
- Amount of deposit
 - Form (check, transfer from another escrow)
 - Place in trust account or escrow by next day unless directed to hold uncashed until:
 - Acceptance by seller, then what?
 - Opening of escrow, with whom?
 - Returned to buyer if offer withdrawn prior to acceptance? If seller rejects offer?



DESCRIPTION

- Full legal description if available
- If too long, attach addendum
- Reference addendum on form
- Addendum dated and signed by parties





Paragraph 2: Financing

- Do all the numbers add up to the purchase price?
- Amount of down payment
- Type of financing
- Loan application by when?
- Contingent upon appraisal?
 - If not checked, buyer contractually obligated to make up the difference between appraisal and purchase price.
- Owner carry back? Secondary financing?
- Cap on interest, terms.
- Prepayment clause. Assumable loan?



Paragraph 3: Closing & Occupancy

- Is buyer representing to lender that the property will be owner occupied?
- Is the property tenant occupied?
 - buyer's rights
 - tenant's right of occupancy
 - Determine before writing the offer
- occupancy agreement
 - For buyer prior to close of escrow
 - For seller after close of escrow



Standard clauses: Paragraphs 4-5

- #4: Costs. negotiable. customarily
- #5: TDS. timing the delivery
 - If not given to buyer prior to writing the offer, buyer has right to cancel without cause
 - TDS-The Real Estate Transfer Disclosure Statement
 - NHD-third party vender/geologist provide a completed Natural Hazard Disclosure Statement



Other Disclosures

- Lead disclosure
- industrial use disclosure
- military ordnance disclosure
- Mello-Roos disclosure

Pg 96





Paragraphs 6-8

- #6: Condominium/Planned Unit Development
 - specific disclosures for common interest development
- #7: Condition of the Property.
 - present physical condition
 - no seller warranties
 - Buyers are on notice to have inspections
- #8: Items Included in Sale:
 - personal and real property
 - Everything is without seller warranty



Paragraphs 9-11

- #9: Buyer's Investigation of Condition
 - Buyer has the right to thoroughly investigate
(blank line for thoroughly missing in Student Study Guide, p. 97)
 - A array of matters may be investigated
 - Time line specified in paragraph #14
(blank line for #14 missing in Student Study Guide, p. 97)
- #10: Repairs: seller's obligations
- #11: Buyer indemnity and seller protection
 - responsibilities of buyer
 - Responsibility of buyer's inspector(s)

Paragraph 12: Title & Vesting



- Full names of buyers and sellers
- Buyer receives a Preliminary Title Report
 - carefully read the report
- Taking title has significant legal and tax consequences. Is Marital status: Community property or Joint tenancy or Family Trust?
- Licensee should refer buyer to attorney and/or accountant.



Paragraph 13-14

- #13: Sales of Buyer's Property
- #14: Time Periods:
 - Number of days for inspections (tends to vary)
 - Buyer given sufficient time to do inspection?
 - Time period must be followed for the contract
 - selling agent must request extension in writing
 - seller has the option to grant or not to grant
 - Contingencies are removed active or passive
 - removal of contingencies and cancellation on deposits

Paragraphs: 15-17



- #15: Final Verification of Condition
 - walk-through is not a contingency
- #16: Liquidated Damages
 - Spells out the amount of damages that non-breaching party will receive
 - Agent should not give legal advice
- #17: Dispute Resolution:
 - Agent can not give legal advice
 - Agent should not give their own opinion
 - Agent should give pros and/or cons of arbitration



Paragraphs 18-22

- #18: Prorations of property taxes
 - special assessments (blank line missing in student study guide)
 - reassessment
 - supplemental tax bill
- #19: Withholding Tax
- #20: Multiple Listing Service (MLS)
 - Owner gives broker the authority to report data
- #21: Equal Housing. anti-discrimination
- #22: Attorney fees: prevailing party Pg 98-99



Paragraphs 23-28

- #23: Selection of Service Providers
 - Principals have the right to select their own
- #24: Time of essence
 - changes must be in writing & signed by buyer and seller.
- #25: Other terms. attached supplements.
- #26: Definition of terms
- #27: Agency: confirms the agency relationship
- #28: Joint Escrow Instructions. open when escrow officer has received a signed copy



Paragraphs 29-33

- Entire contract read and explained to buyer
- #29: Broker Compensation: Signed Buyer/Broker Agreement agreeing on the compensation
- #31: Expiration of Offer: The authority to receive a response to the offer within a specific time period.
- #32: Broker Compensation from seller
- #33: Acceptance of Offer
 - Agent must acknowledge receipt of the signed acceptance of the offer.



Standard Clauses

- Pest control
- Special Studies Zones
 - Alquist-Priolo
- Flood Hazard Area
- Home Warranty Ins.
- Condo Disclosure
- Warranties & Inspections
- Liquidated Damages
- Agency Confirmation
- Compensation Clause



D. Buyer's Inspection Advisory

- Is an addendum to the purchase agreement
- Licensees must carefully review the document
- Given to the buyer prior to writing the offer
- Spells out buyer obligations
- Must be signed and dated by the buyer



Addendum & Exhibits

- Interim occupancy
- Lease for after sale
- VA and FHA amendments
- Contingency release clause
- Personal property inventory
- Complete legal description
- Pre-Qual. letter
- Special or additional addenda



G. SHORT Sales

- Include a short sale addendum



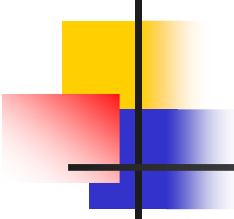
H. Real Estate Owned (REO) Sales

Residential Purchase Agreement And Receipt for Deposit

Date: _____ at _____, California
Received From _____, ("Buyer") A
Deposit of _____ Dollars \$ _____ toward the
Purchase Price Of _____ Dollars \$ _____ For
Purchase of Property Situated in _____ County Of _____
California, Described As _____ ("Property")

1. **FINANCING:** Obtaining the loans below is a contingency of this Agreement. Buyer shall act diligently and in good faith to obtain the designated loans. Obtaining deposit, down payment and closing costs is not a contingency.
 - A. **BUYER'S DEPOSIT** shall be held uncashed until Acceptance and then deposited within 3 business days after Acceptance or _____ with Escrow Holder. Into Broker's trust account, or _____, by _____ Personal Check, Cashier's Check, Cash, or _____
 - B. **INCREASED DEPOSIT** shall be deposited with _____ within _____ Days After Acceptance, or _____
 - C. **FIRST LOAN IN THE AMOUNT OF _____ NEW** First deed of Trust in favor of LENDER, encumbering the Property, securing a note payable at maximum interest of _____ % fixed rate, or _____ % initial adjustable rate with a maximum interest rate cap of _____ %, balance due in _____ years. Buyer shall pay loan fees/points not to exceed _____
FHA VA: Seller shall pay (i) _____ % discount points, (ii) other fees not allowed to be paid by Buyer, not to exceed \$ _____, and (iii) the cost of lender required repairs not otherwise provided for in this Agreement, not to exceed \$ _____.

- 
- D. **ADDITIONAL FINANCING TERMS:** _____
seller financing, (C.A.R. Form SFA-14); junior or assumed financing,
(C.A.R. Form PAA-14, paragraph 5)
- E. **BALANCE OF PURCHASE PRICE** (not including costs of obtaining
loans and other closing costs) to be deposited with escrow holder
within sufficient time to close escrow
- F. **TOTAL PURCHASE PRICE**
- G. **LOAN CONTINGENCY** shall remain in effect until the designated
loans are funded (or ____) Days After Acceptance, by which time
Buyer shall give Seller written notice of Buyer's election to cancel this
Agreement if Buyer is unable to obtain the designated loans. If Buyer
does not give Seller such notice, the contingency of obtaining the
designated loans shall be removed by the method specified in
paragraph 16B)
- H. **LOAN APPLICATIONS; PREQUALIFICATION:** For NEW financing,
within 5 (or ____) Days After Acceptance, Buyer shall provide Seller a
letter from lender or mortgage loan broker stating that, based on a
review of Buyer's written application and credit report, Buyer is
prequalified for the NEW loan indicated above. If Buyer fails to provide
such letter within that time, Seller may cancel this Agreement in writing
- I. **APPRAISAL CONTINGENCY:** (if checked) This Agreement is
contingent upon Property appraising at no less than the specified total
purchase price. If there is a loan contingency, the appraisal
contingency shall remain in effect until the loan contingency is
removed, otherwise, the appraisal contingency shall be removed within
10 (or ____) Days After Acceptance..



1. **ALL CASH OFFER:** If this is an all cash offer, Buyer shall, within 5(____) Days After Acceptance, provide Seller written verification of sufficient funds to close this transaction. Seller may cancel this Agreement in writing within 5 Days After: (i) time to provide verification expires, if Buyer fails to provide verification; or (ii) receipt of verification, if Seller reasonably disapproves it.
2. **ESCROW:** Close of Escrow shall occur ____ Days After Acceptance (or on ____ (date)). Buyer and Seller shall deliver signed escrow instructions consistent with this Agreement within ____ Days After Acceptance, at least ____ Days before Close Of Escrow, or _____. Seller shall deliver possession and occupancy of the Property to Buyer at ____AM/PM, on the date of Close Of Escrow, no later than Days After date of Close Of Escrow, or _____. Property shall be vacant, unless otherwise agreed in writing. If transfer of title and possession do not occur at the same time, Buyer and Seller are advised to (a) consult with their insurance advisors, and (b) enter into a written occupancy agreement. The omission from escrow instructions of any provision in this Agreement shall not constitute a waiver of that provision
3. **OCCUPANCY:** Buyer does, does not, intend to occupy Property as Buyer's primary residence.

4. **ALLOCATION OF COSTS:** (Check boxes which apply. If needed, insert additional instructions in blank lines.)

- A. Governmental Transfer Fees:
- B. Title and Escrow Costs:
- C. Sewer/Septic/Well costs:
- D. Other Costs:
- E. Pest Control Report:

5. **PEST CONTROL TERMS:**

6. **TRANSFER DISCLOSURE STATEMENT; NATURAL HAZARD DISCLOSURES; SUBSEQUENT DISCLOSURES; MELLO-ROOS NOTICE:**

7. **DISCLOSURES:**

8. **TITLE AND VESTING:**

9. **CONDITION OF PROPERTY:**

- A. Except as Specified in This Agreement, Property is sold "AS IS", without warranty, in its PRESENT physical condition.
- B. (If Checked) Seller Warrants That at the Time Possession is Made Available to Buyer:
 - 1. Roof shall be free of leaks . . .
 - 2. Built-in appliances . . .
 - 3. Plumbing systems, . . .
 - 4. All fire, safety, and . . .
 - 5. Septic system, if any . . .
 - 6. All debris and . . .
 - 7. _____ . . .



10. **FIXTURES**

11. **PERSONAL PROPERTY**

12. **BUYER'S INVESTIGATION OF PROPERTY CONDITION:**

13. **FINAL WALK-THROUGH; VERIFICATION OF CONDITION:**

14. **PRORATIONS AND PROPERTY TAXES:**

15. **SALE OF BUYER'S PROPERTY:**

16. **TIME PERIODS/DISAPPROVAL RIGHTS/REMOVAL OF CONTINGENCIES/CANCELLATION RIGHTS:**

A. **TIME PERIODS:**

1. **SELLER HAS:**

2. **BUYER HAS:**

3. **SELLER'S RESPONSE TO BUYER'S DISAPPROVALS:**

B. **ACTIVE OR PASSIVE REMOVAL OF BUYER'S CONTINGENCIES:**

1. **ACTIVE METHOD (Applies if Checked)**

2. **PASSIVE METHOD (Applies Unless Active Method is checked):**

C. **EFFECT OF CONTINGENCY REMOVAL:**

D. **CANCELLATION OF SALE/ESCROW; RETURN OF DEPOSITS:**



17. **REPAIRS:**

18. **WITHHOLDING TAXES:**

19. **KEYS:**

20. **LIQUIDATED DAMAGES:**

21. **DISPUTE RESOLUTION:**

A. **MEDIATION:**

B. **ARBITRATION OF DISPUTES:**

C. **EXCLUSIONS FROM MEDIATION AND ARBITRATION:**

D. **BROKERS:**

22. **DEFINITIONS:**

23. **MULTIPLE LISTING SERVICE ("MLS"):**

24. **EQUAL HOUSING OPPORTUNITY:**

25. **ATTORNEY'S FEES:**

26. **SELECTION OF SERVICE PROVIDERS:**

27. **TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:**

28. **OTHER TERMS AND CONDITIONS:**

29. **AGENCY CONFIRMATION:**

Listing Agent: is the agent of;

The Seller exclusively; or both the Buyer and Seller.

Selling Agent is the agent of;

The Buyer exclusively or the Seller exclusively; or both the Buyer and Seller.

30. **OFFER:**

31. **BROKER COMPENSATION: Seller agrees to pay compensation for services as follows:**

_____, to _____,
Broker, and _____, to
_____, Broker,

32. **ACCEPTANCE OF OFFER:**

If checked: SUBJECT TO ATTACHED COUNTER OFFER, DATED

—

WINNERS vs. LOSERS

- THE WINNER is always a part of the answer
- THE LOSER is always a part of the problem
- THE WINNER always has a red car
- THE LOSER always has a blue car
- THE WINNER says "it may be difficult but it's possible"
- THE LOSER says "it may be possible but it's too difficult"
- THE WINNER sees a green near every sand trap
- THE LOSER sees two or three sand traps near every green
- THE WINNER says "it may be difficult but it's possible"
- THE LOSER says "it may be possible but it's too difficult"

BE A WINNER!!!